

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT TREVINO,

Petitioner,

V.

PATRICK COVELLO,

Respondent.

No. 1:23-cv-00441-KES-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE A CERTIFICATE OF
APPEALABILITY

(Doc. 11)

Petitioner Robert Trevino is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 10, 2023, the assigned magistrate judge issued findings and recommendations that recommended dismissing the petition as untimely. Doc.11. On July 24, 2023, Petitioner filed timely objections. Doc. 12. Petitioner’s objections are unpersuasive because they do not respond to the issue of untimeliness of his federal petition and largely restate the points raised in the petition. Doc. 12.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the case. Having carefully reviewed the file, including Petitioner's objections, the court determines the findings and recommendations are supported by the record and proper

1 analysis.

2 Having found that Petitioner is not entitled to habeas relief, the court now turns to whether
3 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no
4 absolute entitlement to appeal a district court's denial of his petition, and an appeal is allowed
5 only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. §
6 2253. Where, as here, the court denies habeas relief on procedural grounds without reaching the
7 underlying constitutional claims, the court should issue a certificate of appealability “if jurists of
8 reason would find it debatable whether the petition states a valid claim of the denial of a
9 constitutional right *and* that jurists of reason would find it debatable whether the district court was
10 correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added).
11 “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of
12 the case, a reasonable jurist could not conclude either that the district court erred in dismissing the
13 petition or that the petitioner should be allowed to proceed further.” *Id.*

14 In the present case, reasonable jurists would not find the court's determination that
15 petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of
16 encouragement to proceed further. Therefore, the court declines to issue a certificate of
17 appealability.

18 Accordingly:

19 1. The findings and recommendations issued on July 10, 2023, Doc.11, are ADOPTED
20 in full;

21 2. The petition for writ of habeas corpus is DISMISSED;

22 3. The Clerk of Court is directed to close the case; and

23 4. The court declines to issue a certificate of appealability.

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26 IT IS SO ORDERED.

27 Dated: June 27, 2024



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